

16 OCT 2019

Nicholas Jones
nicholas.jones@nzme.co.nz

Dear Mr Jones

Official Information Act 1982 request

Thank you for your Official Information Act 1982 (OIA) request of 29 August 2019, regarding information on unrepresented litigants. Specifically, you requested:

1. *For 2016, 2017 and 2018, data recorded on unrepresented litigants (also called self-represented), including any available detail such as court and type of action, and what proportion of total cases the number of unrepresented litigants represents.*
2. *Since January 1 2016, copies of any documents, briefings, reports and correspondence on the issue of unrepresented litigants and any potential consequences, such as aborted or disrupted trials, and including analysis of trends.*

On 4 September 2019 the Ministry of Justice (the Ministry) sought clarification from you as to the details of part 2 of your request. You confirmed that you were seeking information for all jurisdictions, and open and closed cases. As such, my responses are set out below.

In response to part 1 of your request, please refer to Table 1, attached. Table 1 provides you with information for the 2016 – 2018 calendar years, broken down by representation recorded as ‘self-represented litigant’ and jurisdiction. It is important to note that there may be cases associated with a self-represented litigant where the representation information has not been recorded.

This data only includes active cases, as the Ministry does not hold information on closed cases for the timeframes requested. Therefore, I am refusing that part of your request under section 18(g)(i) of the OIA.

In response to part 2 of your request we have identified the following documents that fall within the scope of your request, and are releasing these to you, attached:

1. Memorandum to Chief District Court Judge Jan-Marie Doogue: Initiatives across the District Court to support people representing themselves. Dated 7 February 2017.
2. Internal paper: Unrepresented litigants – A District Court Analysis. Undated.
3. Factsheet: Self-represented litigants. Undated.

To support self-represented litigants, the Ministry has published guidance for those appearing in the High Court civil jurisdiction and is currently developing similar guidance for District Court civil, High Court criminal and the Court of Appeal. More information can be found here: justice.govt.nz/courts/going-to-court/without-a-lawyer/

If you require any clarification of the information contained in this response please contact Julia Goode, Team Leader, Media and External Relations, by calling (04) 918 8836 or 021 636 416; or emailing media@justice.govt.nz

If you are not satisfied with this response, you have the right to complain to the Ombudsman under section 28(3) of the OIA. You can contact the Office of the Ombudsman by writing to PO Box 10152, Wellington 6143; calling 0800 802 602; or emailing info@ombudsman.parliament.nz

I trust that this information assists.

Yours sincerely

A handwritten signature in black ink, appearing to read 'JSh', followed by a horizontal line and a period.

Jacquelyn Shannon
Group Manager, Courts and Tribunals, Regional Service Delivery

Ref: 77551

Table 1: Number of active cases/applications for the 2016 – 2018 calendar years, broken down by representation recorded as 'self-represented litigant' and jurisdiction

Jurisdiction	Year	Recorded as self-represented	Total number of active cases/applications
Civil cases	2016	9,952	21,117
	2017	11,306	22,178
	2018	13,465	23,873
Criminal cases	2016	4215	127,432
	2017	3727	129,200
	2018	1786	129,824
Family applications	2016	5,713	111,711
	2017	6,165	113,776
	2018	6,895	115,822

Notes:

- This is a count of Family Court applications, Civil jurisdiction cases and Criminal jurisdiction cases .
- Active cases are cases which have not been disposed (closed).
- Cases appearing more than once per year have only been counted once.
- Criminal Active Cases includes cases in both the district and senior courts.
- There may be cases associated with a self-represented litigant where the representation information has not been recorded.

Memorandum

To Chief District Court Judge Jan-Marie Doogue
Chair - International Framework for Court Excellence Committee

From Jacquelyn Shannon, Group Manager Courts and Tribunals,
Regional Service Delivery

CC

Date 7 February 2018

Subject Initiatives across the District Court to support people
representing themselves

For ☐ Approval ☐ Review Comment ☐ Action ☒ Noting

Purpose

1. At the final International Framework for Court Excellence Committee (IFCE) meeting in 2017 you requested further information regarding initiatives operating across the District Court to assist people representing themselves, with a particular focus on initiatives in the Family Court.
2. This request followed a discussion at the final meeting of the work undertaken in the Environment and Employment Courts to assist those representing themselves.
3. This paper provides you with that information.

District Court

4. The Ministry of Justice provides practical guidance on its website for people going to the District Court who wish to represent themselves. The information is found in the section entitled *Going to court without a lawyer*.
5. This section provides general information on what is involved in representing yourself in court. It sets out some questions for an applicant to think about when considering self representation, such as, do they have the time and resources to represent themselves and will they be able to undertake the dual role of applicant and advocate? It also sets out information about legal aid and the legal services available in the community through Community Law Centres and the Citizens Advice Bureau. This section makes it clear that court staff can explain how the court system works but cannot provide legal advice on a case.
6. At the end of the section further guidance is listed under the following headings:
 - Representing yourself in the Family Court
 - Starting a civil case in the District Court
 - Representing yourself in the Employment Court
 - Representing yourself in the Environment Court

- Appearing in the Youth Court
- Making an application to the Māori Land Court.

7. There is also a page containing information about making an application to a tribunal and information about the justice system, including a guide to legal language.

Family Court

Family Court website

8. A number of improvements were made to the Family Court website in 2017 to make it more user friendly and generally easier to follow. Some key changes made were:

- the elimination of complex and unnecessary text to simplify the site
- the introduction of simple, plain English statements that direct the user in a logical and more understandable way
- better linking of information that our applicants often confuse, to help them easily establish what sort of assistance they may receive from the court. For example, on the Domestic Violence page that contains information about Protection Orders, Restraining Orders are also explained with a link to more information about Restraining Orders. On the Restraining Order page there is brief information about Protection Orders and Non-Contact Orders, with links to more information.
- providing a re-direct link at the top of each page in the Domestic Violence section for users' safety. This link allows the user to quickly change the web page they are on to the Stuff website if they think they are being observed and there are instructions on how to cover their tracks online so their search history cannot be viewed on their computer.

9. If a person reading the *Going to court without a lawyer* section of the website clicks on the title *Representing yourself in the Family Court*, they will be taken to the Family Court section of the Ministry's website where the following information is provided:

- *Go to Family Court without a lawyer* (high level information on the court process and the Family Court legislation and rules)
- *Who can be in the court room with you* (with a link to more information about how to act and what to expect in court)
- *Help when you are representing yourself in court* (this includes what needs to be done if a self represented person wants to bring a lay assistant to the hearing)
- *Find out what happens at a conference with a judge* (with a link to an explanatory video)
- *Find out what happens at a defended hearing* (with a link to an explanatory video)

- *Legal help when you are representing yourself* (this provides links to information on legal aid and free community legal help).

The change to Fact Sheets

10. Another initiative is the move away from the use of pamphlets to Fact Sheets - though pamphlets are still available. Fact Sheets are simple one page documents which set out the many and varied processes for applications made to the Family Court. We believe that these documents are easier to understand and more friendly for self represented people to use.
11. Attached is the Fact Sheet - *Going to Family Court without a lawyer – A parenting through separation programme fact sheet*, for your information.

Court based services

12. Most Courts operate a public counter where there are staff available to provide general assistance to those wishing to make applications to the Family Court themselves. This assistance includes providing printed application forms, talking applicants through the forms and outlining all the processes relating to their application. A list of local lawyers can also be provided on request.
13. In addition, Family Court Coordinators meet with persons representing themselves to provide them with support. The coordinator will assist in a similar way to the counter staff, but in setting aside time to meet with the person they are able to ask more probing questions to identify the type of application that may need to be made. If urgency is identified, an appointment is arranged with an available lawyer so that matters can be brought before the court without notice, if that is required.
14. Family Court Coordinators will often provide self represented persons with assistance to understand the courtroom layout and hearing procedure prior to any hearing.

Civil

Ministry Website

15. Similar to the Family Court the language used to assist parties in the Tenancy and Disputes Tribunals on the Ministry website has been simplified and procedural options made clearer in relation to Rehearing's and Appeals. It is a common occurrence for parties who have attended a hearing in either tribunal and who then wish to challenge the decision to be unclear about the options available to them.

Registry Counter Service

16. Communications have been issued to all registry staff placing a strong emphasis on the need to provide accurate and responsive information to customers who are at a Registry counter seeking procedural advice.

Interest on Money Claims Act

17. As a result of new legislation; cases that were filed after 1 January 2018 are able to claim interest as stipulated within the Interest on Money Claims Act 2016.

18. A comprehensive FAQ sheet has been compiled and published on the Ministry's website that answers all key elements a self-represented person would need to know as part of claiming interest on an outstanding civil debt under this Act. This information is also supported with a user-friendly calculator that totals the interest amount in dollar terms over a specific period of time.

Legislative enabler

19. The Justice Committee is currently considering the Tribunals Powers and Procedures Legislation Bill that will improve the operation of the courts and tribunals system.

Disputes tribunal Jurisdiction

20. The Tribunals Powers and Procedures Legislation Bill amends the Disputes Tribunal Act 1988 to increase the maximum claim level from currently \$15,000 (or \$20,000 if all parties agree) to \$30,000. This will increase the number of disputes that can be resolved in this simpler, quicker and cost-effective forum that does not allow legal representation. A maximum claim level of \$30,000 is comparable with overseas jurisdictions.

Changes in the design of services

21. The Ministry's Design and Commissioning team, which is part of the Commissioning and Service Improvement Business Unit, are undertaking two pieces of work that are intended to benefit all applicants making Care of Children Applications or Protection Order applications. While these initiatives are not intended to improve our services for self represented people alone, they are intended to improve the experience of self represented people and to make the process of applying for these applications easier. This work is discussed in the following paragraphs.
22. Care of Children Applications: We are reviewing the application process to understand how it might be made more accessible. We are working with applicants and a group of stakeholders including judges, lawyers and court staff to prototype a new application form, and to understand where the information gaps exist in the process so that we can make improvements and better target the information provided.
23. Protection Orders: As with Care of Children Applications, we are working on understanding where the pain points are for applicants in applying for a Protection Order, and how to make the application process as simple as possible for people to understand and engage with. This includes talking to applicants (including self represented people) to understand their experiences of using the form.

Legal Aid

24. We have made it easier for our customers to apply for legal aid for civil and family matters, combining five forms into one.
25. The length of the form has been considerably reduced by reframing the structure, how questions are asked, and by ensuring the information gathered is only that required for granting purposes. The old forms ran to 26 pages; the new form is eight pages in length.

National themes

26. The initiatives for people representing themselves align strongly with the customer service themes in the Ministry's strategy and goals. Courts across the country are continuously looking at how to improve the service they provide to those representing themselves.
27. The creation of Local Justice Sector Networks for the Family jurisdiction, which operate nationally, will feed into this continuous improvement goal, and as needs for improvement are identified change will be implemented at an operational level.

Recommendations

28. It is recommended that you note this paper.

Enclosures: Fact Sheet: *Going to Family Court without a Lawyer*

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Unrepresented litigants – A District Court analysis

Background

At the IFCE Committee meeting in March 2017, the plans for developing processes, in particular ICT, to assist unrepresented litigants was discussed. During this discussion, it was noted that “unrepresented litigants are a growing phenomenon deserving greater prioritisation” and that “the issue is not idiosyncratic to the District Court or New Zealand, it is a worldwide issue with numerous solutions.”

Also during this discussion, it became clear that very little analysis had been done to measure the size or the impact of unrepresented litigants in the District Court, with the Chief District Court Judge stressing that “in the absence of work done to measure that figure, it may be an assumption rather than a fact.”

After an initial analysis in late April, it was agreed at the May IFCE Committee meeting that MoJ would push for better data capture around representation so that a better piece of analysis could be presented at the September IFCE Committee meeting.

Key findings from the analysis

Criminal – District Court

The proportion of cases with unrepresented litigants is not increasing

The percentage of active cases that have unrepresented defendants has been constant for the past two years at 4%. Cases that did not proceed beyond the administrative stage were not included as counsel would not usually have been recorded at that point in the process.

Less serious cases resolve more quickly when the defendant is unrepresented

Comparing the cases disposed throughout the last year, on average cases with unrepresented defendants take 1.6 fewer events than cases where defendants are represented by counsel. As unrepresented defendants are requiring fewer events, on average their cases are taking 28 days less to progress to resolution.

However, more serious cases take longer to resolve when the defendant is unrepresented

Category 3 cases with unrepresented defendants take on average 0.6 more events to go through the system. This is being driven by an extra event and 17 more days needed to progress through the Review Stage.

Unrepresented defendants have similar outcomes to defendants with counsel

Overall, the outcomes for criminal cases do not differ significantly between cases that are unrepresented and counsel represented. However, where the defendant is unrepresented, there is a slightly lower likelihood of a guilty plea being entered and a slightly lower success rate for cases that proceed through to trial. These two differences off-set each other when it comes to the overall outcomes.

Family – District Court

The proportion of applications with unrepresented litigants is not increasing

The percentage of all unrepresented applicants for family related applications has been constant at 3% in the past year. Also, the proportion of unrepresented applicants has remained constant across all the case types.

Child support is the most likely application type to be unrepresented

The case type that has the greatest proportion of unrepresented litigants is Child Support with 8% of the applicants being unrepresented. This is followed by CoCA with 4% of the applicants being unrepresented, despite the legislative changes introduced in 2014.

Civil – District Court

The proportion of unrepresented litigants became greater than that with Counsel in 2017

The percentage of unrepresented civil cases has been greater than the percentage of counsel represented cases since the start of the financial year (July 2017). This increase in unrepresented cases has been across both defended and undefended cases. The underlying reason for this shift is unclear in the data.

General Proceedings is the most likely case type to be unrepresented

General Proceedings has been the case type with the greatest proportion of unrepresented plaintiffs over the past two years - 54% of cases in the past 6 months had an unrepresented plaintiff.

Overall conclusion

Overall the analysis has indicated that the proportion of cases with unrepresented litigants is not increasing. Also, the analysis indicates that in criminal the overall time and outcomes of these cases is similar whether unrepresented or represented by counsel.

Next steps

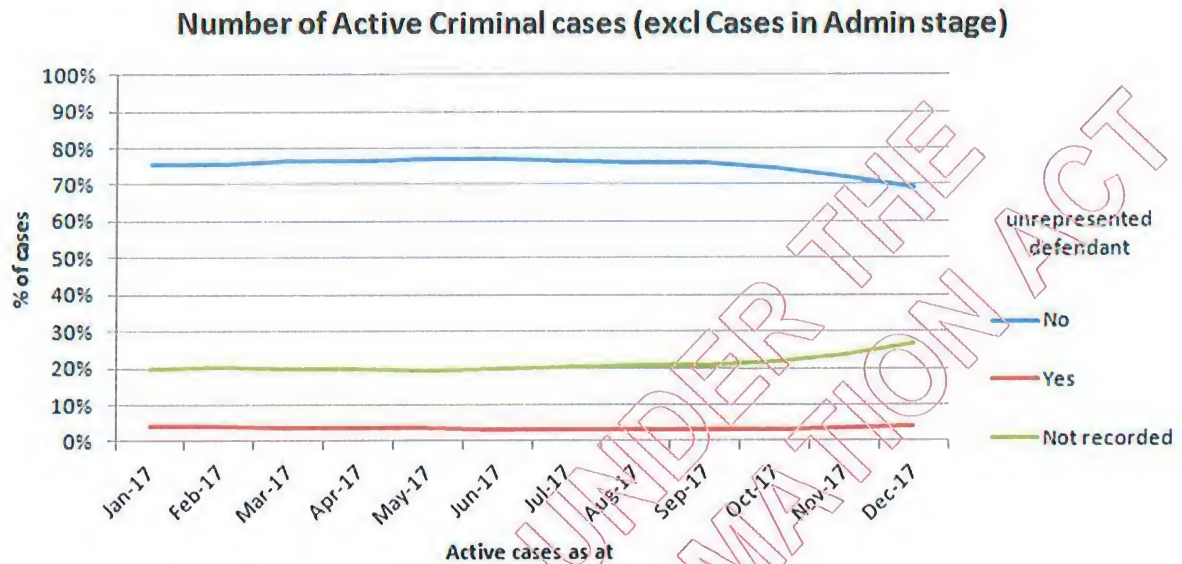
This analysis task came initially from a discussion around the plans for developing processes, in particular ICT, to assist unrepresented litigants. Despite this analysis not indicating a change in pattern regarding unrepresented litigants, it should be noted that there are still around 2,500 of these cases in the Criminal jurisdiction being disposed of each year.

The memorandum of 7 February 2018 titled "Initiatives across the District Court to support people representing themselves" provides a more detailed description of support currently available to unrepresented individuals, and may lead to a more in depth discussion for further possible improvements to processes.

Appendix

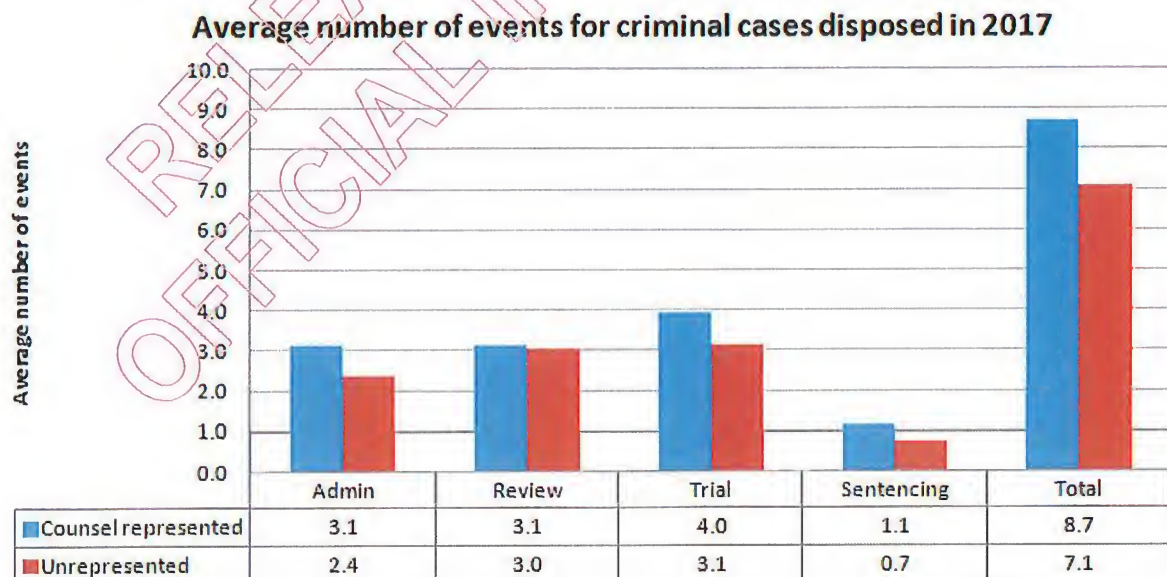
Criminal – District Court

Graph 1: Percentage of Active Criminal Cases (excluding Cases in Admin Stage) as at month end by type of representation.



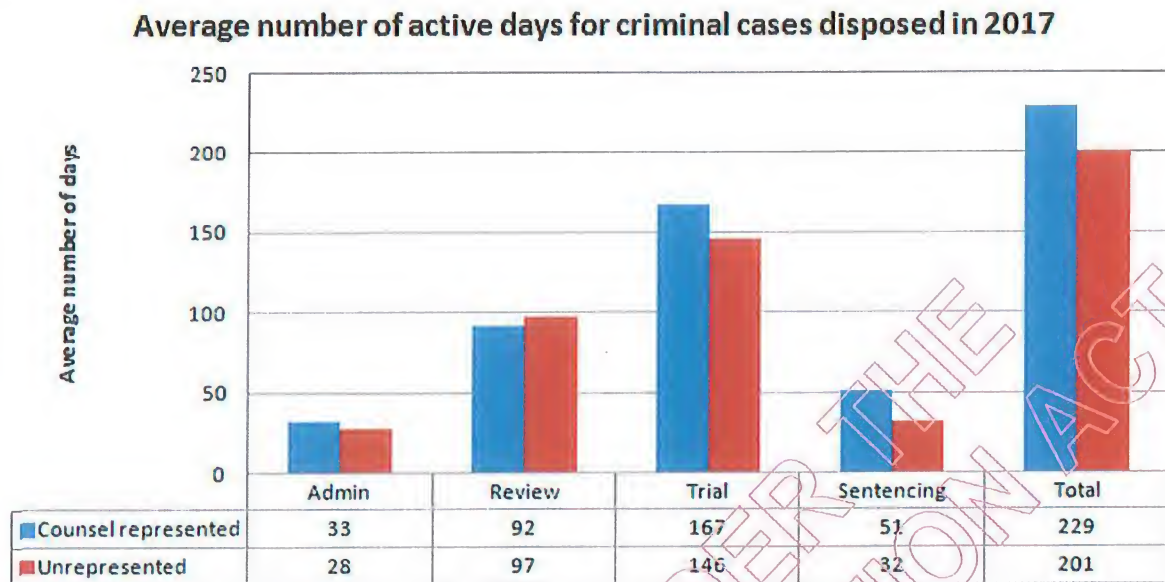
Note: The last few months may be subject to late data entry.

Graph 2: Average number of events for criminal cases disposed in the last 12 months by type of representation



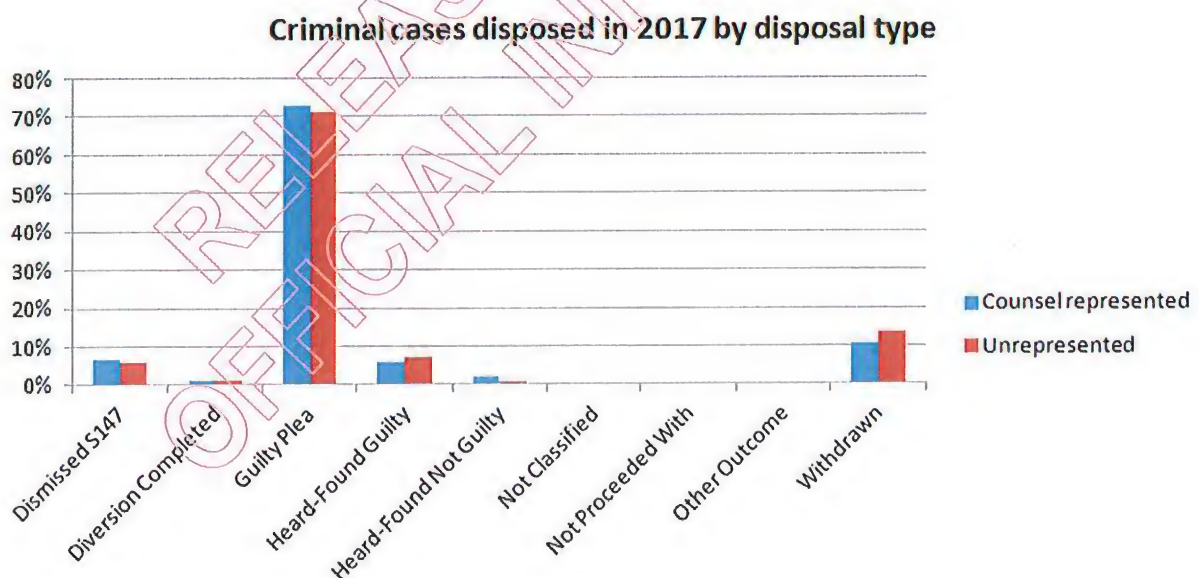
Notes: This data excludes cases where the counsel or self representation was not recorded. This data excludes cases that were disposed in the admin stage.

Graph 3: Average number of active days for criminal cases disposed in the last 12 months by type of representation

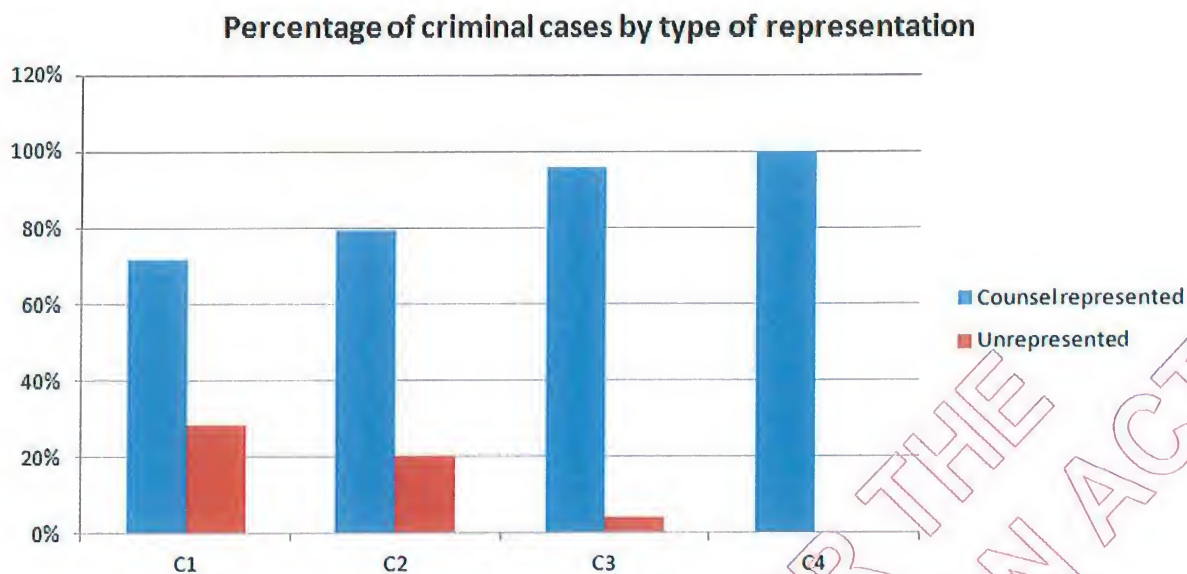


Notes: This data excludes cases where the counsel or self representation was not recorded. This data excludes cases that were disposed in the admin stage.

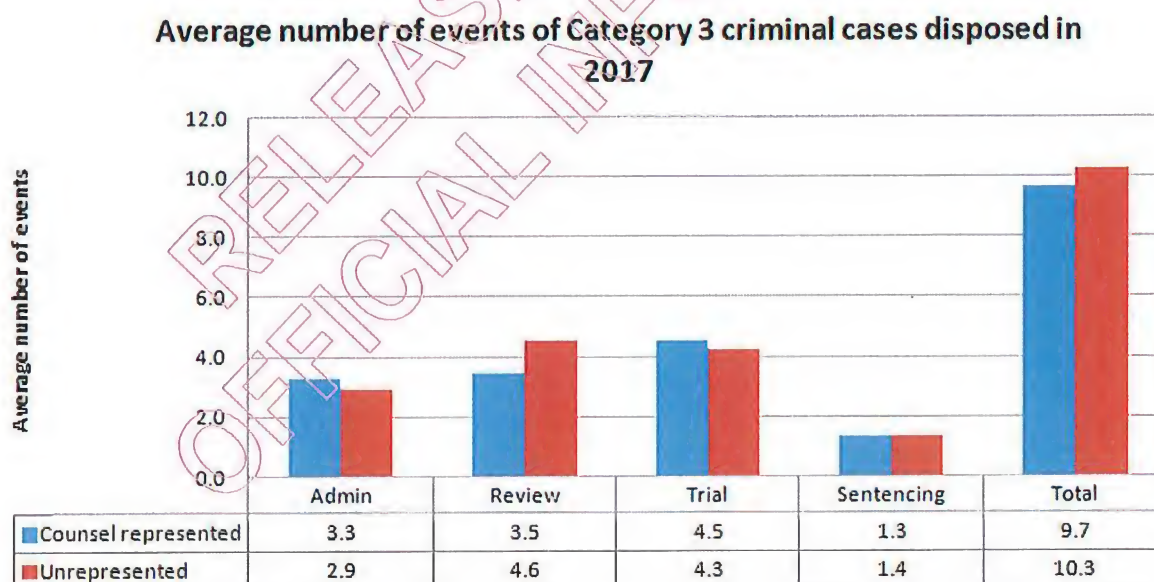
Graph 4: Percentage of criminal cases disposed in the last 12 months, by disposal type and type of representation



Notes: This data excludes cases where the counsel or self representation was not recorded. This data excludes cases that were disposed in the admin stage.

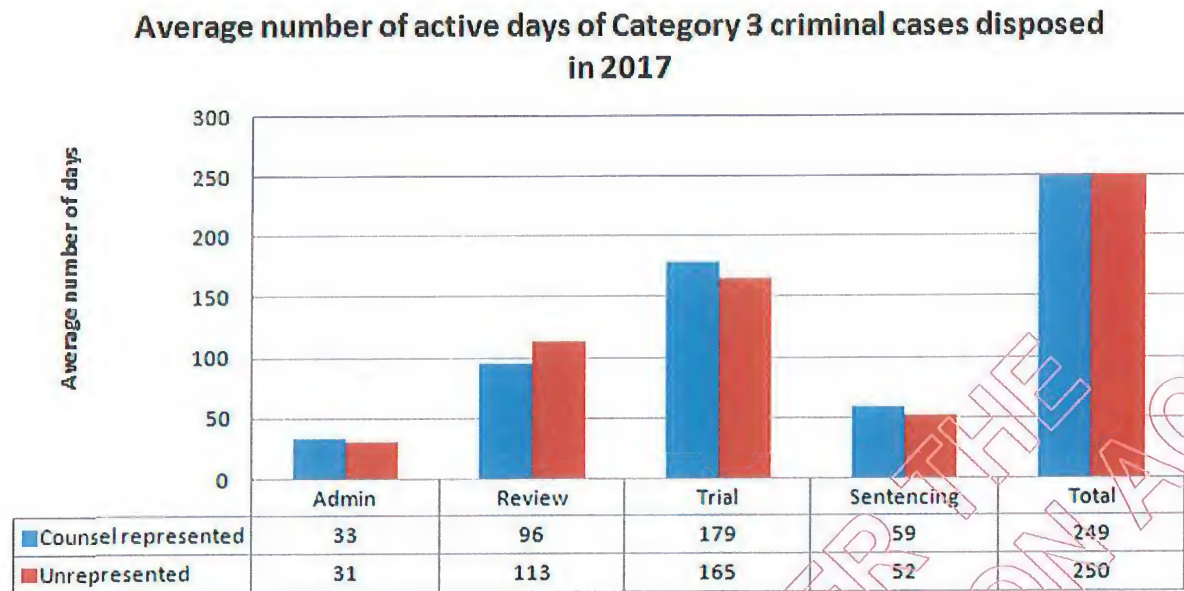
Graph 5: Percentage of cases by category and type of representation

Notes: This data excludes cases where the counsel or self representation was not recorded.
This data excludes cases that were disposed in the admin stage.

Graph 6: Average number of events for Category 3 cases disposed in the last 12 months by type of representation

Notes: This data excludes cases where the counsel or self representation was not recorded.
This data excludes cases that were disposed in the admin stage.

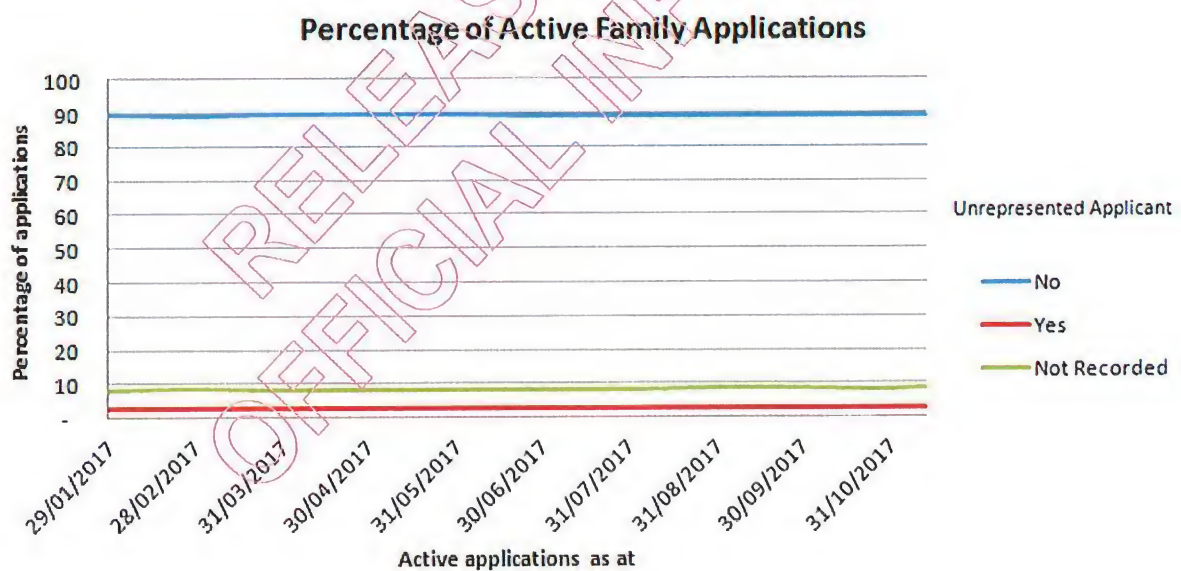
Graph 7: Average number of active days for criminal cases disposed in the last 12 months by type of representation



Notes: This data excludes cases where the counsel or self representation was not recorded. This data excludes cases that were disposed in the admin stage.

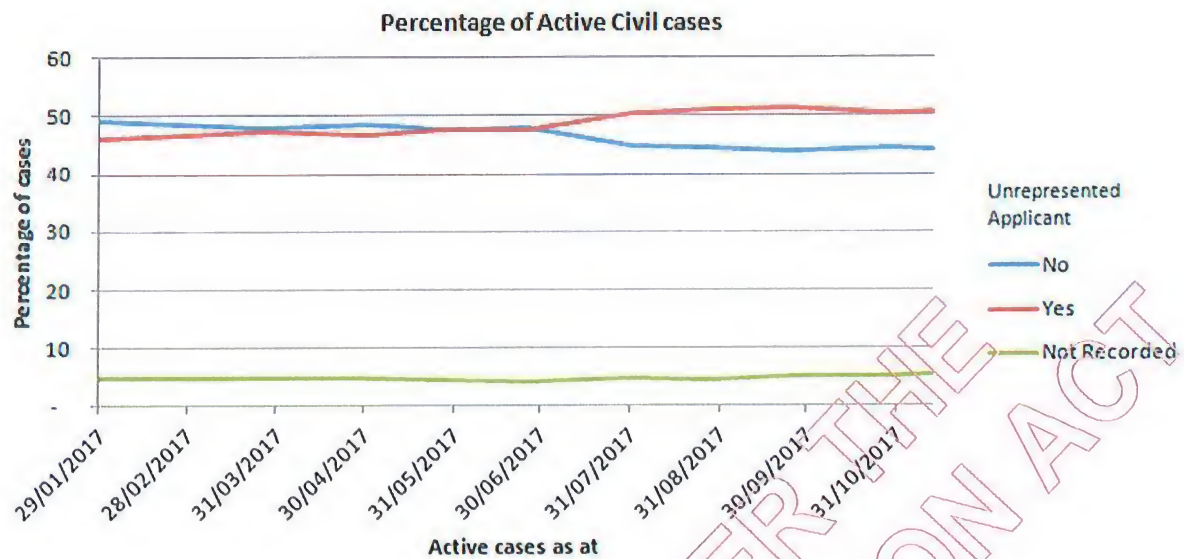
Family – District Court

Graph 8: Percentage of active family applications by type of representation

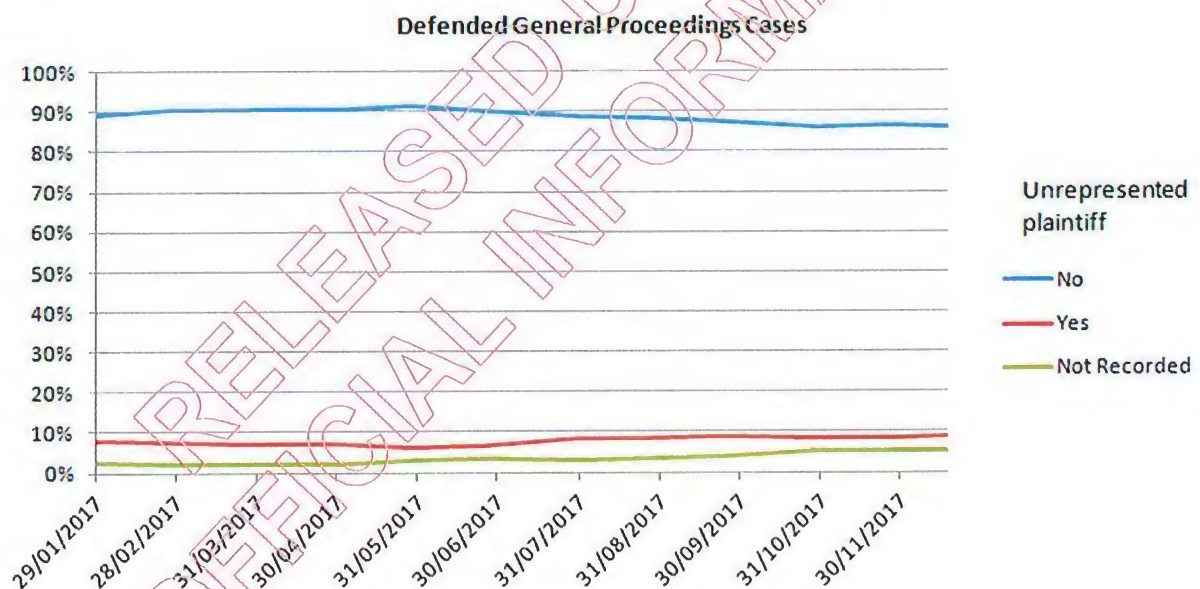


Civil – District Court

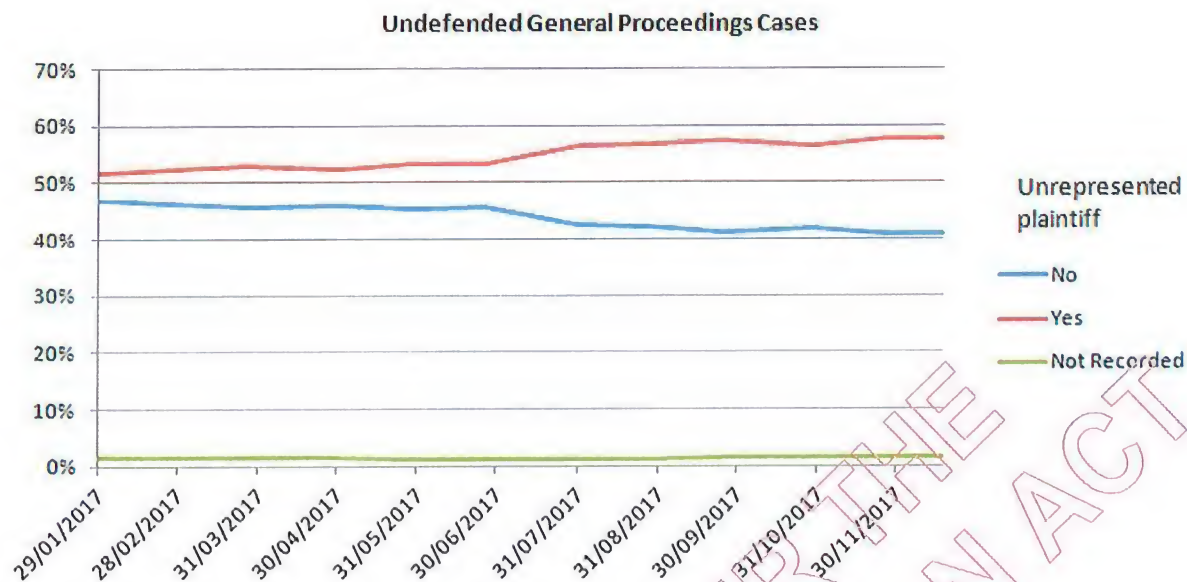
Graph 9: Percentage of Active civil cases by type of representation



Graph 10: Percentage of defended General Proceedings cases by type of representation



Graph 11: Percentage of undefended general proceedings cases by type of representation



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Self-represented litigants

The Ministry of Justice is aware of the concerns that judges and others have expressed about the impact of self-represented litigants (SRLs) in court and is considering what more needs to be done to address these concerns.

54%

of active general proceedings civil cases in the District Court in late 2017 had a self-represented plaintiff (compared to 51% of all DC civil cases)

4%

of active criminal cases in the District Court in 2017 had a self-represented defendant

3%

of active Family Court applications in 2017 had a self-represented applicant (the highest case types being 8% for child support and 4% for CoCA)

Lawyers' fees account for 81%

of the cost of taking a claim to enforce a contract, with court fees comprising only 7% (according to the World Bank's *Doing Business* 2017 report)

Data on self-represented litigants

- The Ministry does not currently have comprehensive and reliable data about the number of SRLs in NZ courts.
- Anecdotal information is that SRLs are most common in the civil, family, and appellate jurisdictions. Comparable jurisdictions, including Australia and the UK, have reported an increase in self-representation.
- The percentage of self-represented plaintiffs in active District Court civil cases increased suddenly from 47% to 51% in mid 2017, driven by a change from 50% to 54% in general proceedings cases. There has been very little change in percentages for other District Court jurisdictions.
- The Ministry is investigating options to improve the reliability of data on SRLs to ensure accurate and timely information is available about self-representation in New Zealand.

Reasons for self-representation

- Reasons for self-representation are varied and include litigant choice, inability to engage a lawyer because the case is vexatious, or financial barriers.
- Policy/legislative settings may also require self-representation - e.g., the 2014 Family Justice reforms restricted legal representation in the Family Court.
- Court fees, while often cited as contributing to self-representation only comprise 7% of costs of a claim in New Zealand. Waivers of court fees are also available.

Responses to self-represented litigants

- *Support for SRLs* – the Ministry has published guidance for SRLs in the High Court civil and criminal jurisdiction, and District Courts civil jurisdiction, the Family Court, and is considering doing so for other jurisdictions.
- *Vexatious SRLs* – the Judicature Modernisation legislation, now in force, enables courts to limit meritless proceedings in more circumstances than currently possible.